Part 1 Judocracy Talshir

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**Introduction: The Quest for Lasting Power**

The Knesset seeks to bury us in legislation, and the court assumes roles that extend beyond its duty. The conduct of some of our authorities threatens more and more of our liberties and the governability of our elected officials. We have to quickly return the train of governability to its proper track – based on the definition of Israel as Jewish and democratic (Ayelet Shaked, Minister of Justice, Oct. 2016).

Benjamin (Bibi) Netanyahu is the longest-serving prime minister of Israel. Longevity in power is perhaps the feature most identified with Bibi. Nevertheless, loyalists from the right and adversaries from the left would both find it hard to say what Netanyahu’s regime actually stand for. The myth – and power – of the Netanyahu regime, which has dominated Israeli politics for the last two decades, transforming Israeli democracy beyond recognition, has yet to be deciphered. Brute force, opportunism, the will to power, tyranny of the majority – these are the kind of answers offered by the media, rival politicians and scholars to explain the driving force of Netanyahu’s government. Even the president of Israel, Reuven Rivlin, in a speech at the Knesset’s opening session in October 2017, referred to the Netanyahu government as generating an “everything is political” revolution:

Majority rule – is the only ruler… a reality where “everything is political” is developing. The media – political; the democratic institutions, all of them, from the professional bureaucracy to the state comptroller – political; the Supreme Court – political; the security forces – political. Is even the IDF, our defense force, political? All the country and its institutions – political. This revolution apparently attempts to tear, at last, the mask of hypocrisy from the gatekeepers. In this revolution, the ruler is also the victim. “We will show you what it really is” – that’s the voice of this revolution, there is no more statehood. After us, the deluge. (Rivlin, 2017)

The sentiment identified by the president – once a true-blue member of the right-wing camp – is correct. But every struggle for power is also a struggle over perceptions, ideas and worldviews. Beneath the will to power and the desire for pure, unrestrained rule, an ideology emerges, a different vision of rule for the Jewish state. This ideology, translated into legislation and policies, is not just a different way to follow the rules of the game; it changes the rules of the game, and with it the game itself.

This book offers a first ideological exposition of the makeup of the right-wing governments in Israel, highlighting the profound transformation of the once-shared worldview that saw Israel as equally Jewish and democratic. The Netanyahu regime took Israeli society from a representative democracy, an egalitarian state with universal welfare and public education based on a collective Israeli identity, to a neoliberal Jewish state. Israel is perhaps a “start-up nation,” but it is also a fragmented, ethnically divided society with high child poverty rates. The Netanyahu regime has made the cornerstones of Israeli democracy – the judicial system, the civil service, the attorney general, the state comptroller, unions, the public media and the universities – into the people’s enemies.

Two key concepts in understanding this transformation are *people* and *governability*. The ideal of an Israeli democracy has transformed into the majoritarian notion of the Jewish people. The system of a democratic regime with checks and balances is replaced by a government-centered notion of power and a preoccupation with governability and “eliminating the obstacles” – that is, the judicial system, regulation, the public service, civil rights organizations, the media and other critics of the regime. This government is loath to interfere in the market, thus encouraging the private market to take over state functions, while eager to engage in promoting Judaism as a collective identity – the classic neoliberal/neoconservative contradictions of the new right (King, 1987). The main question is whether the Netanyahu regime merely offers an alternative, legitimate vision of Israeli democracy, or whether it undermines the democratic character of the sole democracy in the Middle East.

**The Structure of the Book**

The book has three parts. The first part analyzes the constitutional changes that dramatically altered Israeli democracy. The first chapter looks at the issue of African workers who entered Israel unlawfully – referred to as “illegal infiltrators” by Netanyahu’s ministers – as a case in point. We apply all three levels of analysis to this case: the concept of Netanyahu’s rule, encapsulated in the term governability; the emerging image of the people, the Jewish people who must be protected from the infiltration of non-Zionist, non-Jewish immigrants, the ultimate others; and the ideological tension between neoliberalism and neoconservatism, as exemplified in the policy battle in the Prime Minister’s Office regarding the illegal immigrants. Neoconservatism defines Netanyahu’s government – the Likud party and its “natural partners” (the religious and ultra-Orthodox parties) – as a radical right-wing coalition. Under the government’s populist neoconservative approach, the party system has realigned: Shas, United Torah Judaism and the Jewish Home, which used to be considered pivot parties that could partner with either leftist or rightist coalitions and remain neutral – have closed ranks with the deep right. This realignment serves as a foundation for Netanyahu’s continued hold on power.

The second chapter centers on the Basic Law: Israel as the Nation-State of the Jewish People, the “law of all laws” as the joint committee that drafted the legislation often referred to it. The new basic law, enacted in 2018, does much more than just state a historical fact. It involved a vehement struggle over the definition and character of the State of Israel. In particular, this struggle came to fore in the debate over adding an equality clause affirming that Israel is not only the nation-state of the Jewish people, but also a democracy that extends equal rights to all its citizens. (Netanyahu’s coalition won the battle against adding the equality clause.) Likewise, a fierce debate raged on whether to stipulate in the law (or at least in its preamble) that Israel is both Jewish and democratic, as noted in Basic Law: Human Dignity and Liberty (1992). The Nation-State Law transformed the constitutional design of the state in a way that actually threatens its democraticness. Ultimately, a state in which collective rights are equal, or superior, to individual rights cannot be considered a democracy.

The third chapter exposes this constitutional revolution as an anti-court revolt against the Supreme Court in Israel. The actors behind this national revolution are seldom in the spotlight: the think tanks of the settlers’ camp, including the Institute for Zionist Strategies and the Kohelet Policy Forum. It is important to emphasize that it was far from just a legalistic revolution. We examine the transformation of civic education in Israel to demonstrate the pervasive impact of this radical philosophy of Zionist nationalism on the socialization of the future citizens of Israel.

The second part of the book takes the idea of “the people” a step further, examining the concept of governability and the evolving perceptions of democracy, politics and the relations between the executive, legislative and judicial branches in Netanyahu’s regime. The fourth chapter discusses two facets of loyalty, analyzing citizenship laws and the cultural reconstruction of the Jewish narrative under Bibi’s most loyal minister, Miri Regev. The analysis of governability continues by addressing what Yariv Levin and Shaked, the ideological spearheads in Netanyahu’s government, call “the tyranny of attorneys” to justify their attack against the old elites, the judicial system and the civil service. A prime example is the coalition’s attempt to limit judicial review by enacting an “override clause” curtailing the power of the courts to rule on the constitutionality of legislation approved by the Knesset. The election scene in 2015 is analyzed as a case study of the realignment of Israel’s party system according to different conceptions of what it means for the state to be Jewish and democratic. The discussion traces the consolidation of the neoconservative right, with its ideas of governability and the rule of the (Jewish) people.

The third part of the book explores the tensions within the right-wing camp between two sister-ideologies – neoliberalism and neoconservatism. One chapter analyzes the case of the Arabs – incitement against Arab Israelis as a way of delegitimizing the left in Israel, while enacting a progressive economic program for the Arab society. The final chapter analyzes Netanyahu’s relations with the media. We examine the case of the Israeli Broadcasting Authority and its abolition by the government to trace the neoliberal wibe as well as the quest for power. The analysis shows the prime minister’s preoccupation with the media, as reflected in the three charges on which he was finally brought to trial. The concluding discussion analyzes the structural changes and ideological realignment as tools for assessing Netanyahu’s legacy and its influence on Israeli identity and democracy.

**PART I**

**Jewish and/or Democratic?**

**Changing the Constitutional Design**

**Chapter 1**

**Infiltra(i)tors: Enemies of the Jewish People**

“This is an important day today,” announced Prime Minister Netanyahu at an unusual and urgent press conference he convened on April 2, 2018. Standing alongside his minister of interior, the head of the National Security Council and the director-general of the Population and Immigration Authority, Netanyahu declared: “Only eight years ago our border with Africa was completely breached. Within one decade, we would have had one million people. Against this grave danger, I decided to build a fence.” He noted that he had made this decision in the face of strong objections. Since the fence was erected, he boasted, only 60,000 people had illegally entered Israel and some 20,000 of these “infiltrators” had already been deported. His big breakthrough, the prime minister recounted, was to reach an agreement with a third country to deport the illegal immigrants, even without their consent. When the third country – Rwanda, as it was later revealed – succumbed to international pressure and refused to accept Africans deportees from Israel, he negotiated with the UN Refugee Agency (UNHCR) to reach an agreement that he is announcing today, the prime minister explained. Netanyahu concluded: “I understand the expectation was, as was also mine, that we could deport all of them to the third country. Since this is not possible, we will do the best thing possible: an unprecedented agreement, also with a great budgetary and organizational effort, to get the people out, to scatter those who stay and to rehabilitate south Tel Aviv.”[[1]](#footnote-1) The plan called for the UN to remove 16,250 people from Israel and relocate them in democratic countries in the West; a similar number would receive temporary residency status in Israel for five years.

However, within a few hours, the great and unprecedented achievement that Netanyahu had proudly presented as his own policy was overturned by the prime minister himself. While the agreement with the UN drew praise from professional authorities dealing with the asylum seekers in Israel, furious reactions against the new policy immediately followed the press conference. There were three main sources of opposition:

1. Netanyahu had apparently failed to inform any of his ministers about the UN plan, except for the minister of interior (who was not from his party), despite the fact this was a major policy issue of the Netanyahu government, involving a number of ministries. Consequently, several ministers openly criticized the policy. They included Regev, the minister of culture and sports, and Israel Katz, the transportation minister, both from his own Likud party, as well as the more centrist Moshe Kachlon, the finance minister.[[2]](#footnote-2)
2. The prime minister’s electoral base reacted fiercely. Netanyahu’s Facebook post about the new agreement stirred unprecedented resentment, even among his staunchest followers. Some wrote that the plan “disgraced” the prime minister and the Likud, and vowed and that the “base” would vote against Netanyahu for abandoning the poor neighborhoods of south Tel Aviv and surrendering to the Supreme Court and international pressure.[[3]](#footnote-3) The self-appointed representatives of south Tel Aviv, where most of the asylum seekers live and work, accused Netanyahu of nothing less than betrayal, as well as submission to international pressure and the courts.
3. The fiercest opposition came from two of his political rivals – Naftali Bennettt, the education minister and the head of the Jewish Home party (the closest party to the Likud ideologically and therefore its main rival in national elections), and Gideon Sa’ar, a former minister of interior and a contender for leadership of the Likud party. Their main complaint was that the prime minister had agreed to grant residency status to 16,250 Africans. They both argued that Netanyahu had signaled to millions of job seekers in Africa that infiltrating Israel illegally is a win-win situation for them: They would either be granted a work permit in Israel or deported to a Western country. Israel as a Jewish state, they argued, was doomed because Netanyahu had caved in to pressure. Bennettt demanded that Netanyahu rescind the agreement with the UN.

Seven hours after ceremoniously unveiling the plan, the prime minister announced its suspension. He canceled it altogether the next morning, fully aware that no other solution was on the table. The 16,250 people the UN had agreed to resettle in other states would now remain in Israel. Furthermore, almost twice as many would have to stay in Israel without work permits and without an option to resettle in a third country.

“This, the greatest fiasco of [Netanyahu’s] premiership, attests that he is not fit to hold that lofty office,” a senior commentator wrote on Bibi’s flip-flop.[[4]](#footnote-4) What were the roots of this fiasco? How did the prime minister explain his change of policy and his rejection of the only available plan vis-à-vis asylum seekers? Today, Israel is still without an immigration policy and, of course, none of the asylum seekers – not 6,000, as the UN plan hoped to deport in 18 months, and not 60 – were taken off the streets of the overburdened and impoverished neighborhoods of south Tel Aviv. “Israel has no policy – the only viable policy is the UN agreement, which I hope will one day be implemented,” said Shlomo Mor-Yosef, director-general of the Interior Ministry’s Immigration and Population Authority.[[5]](#footnote-5) Why did the African asylum seekers – a marginal group of 35.000 people in a country with a population of nearly nine million – become so crucial that the prime minister had to withdraw from his best policy achievement yet? As this chapter unfolds, we will uncover the five layers of interpretation upon which this book is structured:

1. Governability: What is the concept of governing that Netanyahu projected with the UN plan and what image of governing was he trying to portray when abolishing it? How does Netanyahu perceive – and project – himself as a leader, and what is his policymaking concept?
2. The “people”: In presenting the UN plan, Bibi refrained from naming the people involved. He did not call them “asylum seekers,” “refugees,” “foreign workers” or “infiltrators.” However, since reneging from the agreement, Netanyahu has consistently referred to them as “illegal infiltrators” – thus assigning a double negation to them. What is the collective identity behind the scenes? That is, who are the “we” and who are the “others” in this case? Who are the groups that comprise Netanyahu’s self-identity as a collective, their identity so strong that it caused the prime minister to replace good policy with no policy? What is the idea of the (Jewish) people that emerges, given that the African illegal immigrants are the ultimate “others” for a right-wing government? And who is in enemy from within? Who, in the prime minister’s analysis, is collaborating with the asylum seekers to form the “disloyal” and anti-nationalist camp of “others”?
3. Ideological tensions: What is the policy framework from which the immigrants are viewed? Is it the economic perspective, as seems to be the case in the initial policy declaration, or is it the pre-deportation detention centers, emanating from the neoconservative concern with the ethno-cultural purity of the nation? How does the tension between neoliberalism and neoconservatism play out in the case of the infiltrators?
4. Realignment: Why and how did the immigration policy become a game changer in terms of the rules of the Israeli democratic game? Is this a structural change that challenges Israeli democracy as such?
5. **Governability**

“In a surprising way on all counts, Netanyahu acted yesterday afternoon at the press conference as a leader. He could have dropped the case on the Supreme Court at the outset, but he chose to speak the truth to the public – even when it was unpleasant for his own constituency. There is no other option besides the agreement with the UN. In many respects, his act of leadership at 4:30 PM was much more surprising than his flip-flop at 10:45 PM.”[[6]](#footnote-6) What did Netanyahu’s act of leadership consist of, and what is the concept of governability it entails? How does it reflect the prime minister’s conception of democracy and governance? And how, in turn, is his view of governability and and democracy reflected in his decision to cancel the agreement and leave Israel with no viable immigration policy, stranding 35.000 Africans who had entered Israel irregularly?

Consider the press conference. The setting is a clear indication of the perception the prime minister wants to project: a leader with his chosen team. In this case, the team included the minister of the interior, who does not threaten Netanyahu’s base in the next elections, and the head of the National Security Council, who is appointed and controlled directly by the prime minister. It was a closed, secret, strategic team that worked away from the media limelight and apart from other officials to produce a policy solution for the problem.

Next, Netanyahu’s speech. It is structured around the prime minister as a leader, strongly vocalizing “I” sentences to emphasize the decisive role of the prime minister. After explaining the attraction of Israel as a land bridge from Africa to the developed world and the threat of one million Africans flooding Israel (apparently a gross exaggeration),[[7]](#footnote-7) he stated: “Against this grave danger **I** have ordered the building of a fence. **I** **myself** supervised its erection**. I** used to go down every three to four months to oversee its progress.” Netanyahu went on to describe the various objections to building the wall and then declared: “**I** didn’t accept these explanations and the barricade was built.”[[8]](#footnote-8) It is he, single-handedly so to speak, who reduced the threat of one million infiltrators to 60,000 (more than 20,000 of whom were already deported).

His personal touch and involvement did not end with building the wall. In regard to the poor neighborhoods that bear the main brunt of the asylum seekers, Netanyahu said: “**I** went to the neighborhoods. **I** saw the suffering of the people. **I** spoke to the people and **I** came to visit at night.” This was meant to express his personal concern for the inhabitants of these neighborhoods – his classic electoral base – and strengthen their sense of personal connection with the prime minister. He then proceeded to describe the idea of deportation to a third country as his own breakthrough. However, the blame for the plan’s demise is assigned to the third country, Rwanda, which, in Bibi’s description, succumbed to international pressure.

“We didn’t give up again,” the prime minister asserted, and stressed that he was the one who had ordered the head of the National Security Council to negotiate an agreement with the UN Refugee Authority. Netanyahu also expressed his pride in the agreement’s “mutuality” – echoing his famous demand from the Palestinians: “if they give, they will get.” This time the mutuality principle was applied vis-à-vis the UN: For every asylum seeker deported by the UN, Israel would grant a five-year residency permit to one individual. Again, the prime minister’s personal fingerprints were on every turn of the policy road. “We are doing the best thing we can … this is an important day, a day of good news,” he concluded. The message is that the prime minister acts on behalf of the national interest, the common good. He is aware of the problems and thus promises to disperse the Africans away from Tel Aviv and to rehabilitate those areas, but the policy is aimed to the server the greater good.

If we take the agreement with the UN as a case in point, the governability perception that emerges is one that centers on a leader of his people. The leader is the major architect and initiator of policy; the rationale is protecting his people and putting the public interest first. The mode of action is establishing a discreet and highly loyal team of professionals who conduct strategic work with international and national agencies, report solely to the prime minister and produce an immigration policy and implementation plan within the map of opportunities and legal restrictions. Note that the institutional bodies responsible for mediating policy in a democracy – the ministers and their professional staff, the government itself – are kept completely at dark. So are the players on the ground, including the police, the mayor of Tel Aviv and the agencies that deal with the asylum seekers. Indeed, one of the major criticisms of the agreement was that there was no political engagement with the stakeholders – the representatives of the poor neighborhoods, the agencies on the ground, the local leaders – which, with the right preparation, could have created a public consensus in favor of the agreement.

Nonetheless, this entire surprising episode was the exception to the rule. The rule of politics manifested itself shortly after the press conference and led the prime minister first to suspend the plan and then completely overturn his own policy the next morning, even before his hastily summoned meeting with the local activists and party representatives. But what was his idea of governability – and democracy – as he reversed his plan, his own act of leadership, and why did the forces weigh against it so forcefully?

What had changed between Netanyahu’s press conference at 4:00 PM, his suspension of the plan at 10:45 PM and his cancellation of the plan and policy altogether the next morning? As noted, the plan was warmly received by the professional community and by civil servants involved in immigration policy, and was commended in the international arena. Netanyahu’s agreement with the UN also won solid support from liberal-democratic politicians and citizens, and it was endorsed by the center, center-left and center-right as serving the national interest. However, furious reactions quickly appeared on the prime minister’s Facebook page. Particularly damaging were the angry comments from his admirers – for example: “Bibi, every day I’ve blessed you on Facebook with the priestly blessing. Your despicable decision regarding the infiltrators is throwing mud at the faces of the residents of south Tel Aviv … As far as I’m concerned, you can go home today. You try to appease the left and our crap media. It’s time to go to elections. The Likud will be hit hard because of your despicable decision today.”[[9]](#footnote-9) In addition to the angry responses on social media, the pro-deportation organizations in south Tel Aviv roundly condemned the deal. While several Likud politicians and ministers reacted in dismay (perhaps mainly because they were not consulted), the most damaging responses from the prime minister’s perspective came from two of his rivals: Bennett and Sa’ar.

From Netanyahu’s perspective, Bennett – his main rival in the nationalist camp – had placed him in a catch-22 situation by immediately calling upon the prime minister to withdraw from the agreement with the UN. If Netanyahu stuck to the agreement, Bennett would accuse the prime minister of surrendering to the left, the reviled UN and the courts. If Bibi caved in and canceled the agreement, Bennett would claim credit for forcing Netanyahu to do the right thing from a national perspective. Bennett tweeted right after the press conference that the Israeli government had a clear policy: Approved refugees would be protected and remain in Israel, while all other unapproved asylum seekers and foreign workers would be deported. (As of early 2018, after processing about 6,500 of 15,000 applications, only 11 were approved).[[10]](#footnote-10) Bennett tweeted that by signing the agreement, “we send a clear message to the whole world: Those who infiltrate illegally into Israel will win a prize of residency, either here or in a Western country. This is a call to millions of potential work immigrants to come to Israel.”[[11]](#footnote-11)

Reinforcing this attitude was Gideon Sa’ar, the former interior minister who was warming up on the sidelines, awaiting an opportunity to replace Netanyahu’s as the leader of the Likud party. Sa’ar deported 10,000 asylum seekers from Israel in his two years as interior minister. On the evening following Netanyahu’s press conference, Sa’ar was interviewed on Channel 20 – the right-wing nationalist TV channel that Netanyahu’s government had established. Sa’ar declared, “It is a long struggle over the character of the state. Four to five million displaced people are in Africa. The only way to stop them is to return to deportation to a third country, including Eritrea.”[[12]](#footnote-12) Thus, according to Bennett and Sa’ar, the character of Israel was at stake and Netanyahu was threatening the Jewishness of the state by signaling to millions of Africans that they could work in Israel or use Israel as a way station to a Western democracy. In an election year, with crucial investigations being conducted against him and a battle for every vote in the nationalist camp, Netanyahu could not stick to his guns. The national interest-based policy had to give way to tribal politics.

The last straw in this political battle was the full endorsement of the new agreement by the professional community, the civil servants, the civil rights organizations and the left-wing parties, as well as the international community. All of these political players were the targets of a fierce incitement by key ministers in Netanyahu’s government and by his own advisers. The leader was compelled to concede. In a last-gasp attempt, he suspended the agreement in the evening and posted an explanation of “the facts.” In the morning, however, he called a meeting with representatives of the south Tel Aviv neighborhoods, Likud local activists and the press, and announced the full cancellation of the UN plan.

What concept of governability emerges from the swift overturn of the prime minister’s position? Interestingly, the characteristic of the leadership genre is immanent in Bibi’s discourse on both sides of the flip-flop. Thus, he stated in his rare visit to south Tel Aviv on July 31, 2017: “We are dealing with illegal infiltrators. Not refugees. The right of the state of Israel is to protect its borders and to distance the illegal infiltrators. In order to do that **I** came to hear, **I** heard – **I** heard Sofia and **I** heard Ayala [naming ten activists and tenants of the neighborhoods he met] and now what **I** hear is pain and horrible distress.”[[13]](#footnote-13) So it is all about the leader – coming down to the people – and hearing them out. Yet, of course, he only made the effort to hear “his” people. There were no asylum seekers, south Tel Aviv tenants who have other opinions, city officials or other activists. Only the prime minister’s close followers, activists of the pro-deportation organizations and party functionaries were allowed into the otherwise sterile area around the prime minister.[[14]](#footnote-14)

Thus, governability is all about the leader at the center. But Netanyahu’s emphasis is on himself as attentive to the people – and the object of this attention can change. In announcing the UN agreement, for example, the leader’s rational policy serves the national interest of the people. In canceling the agreement, and in his visit to south Tel Aviv, Netanyahu’s “people” include only his narrow electoral base: the local activists, the party functionaries and supporters of the nationalist camp. But where are the intermediaries between the leader and the people? The formal institutions? The ministers? In his Tel Aviv visit in July 2017, he mentioned only three ministers – Gilad Erdan, Regev and Ofer Akunis – as his partners in an effort to enhance law enforcement.[[15]](#footnote-15) While Erdan was minister of internal security, Regev was the minister of culture and Akunis the minister of science. How would Regev and Akunis help in law enforcement? They obviously had nothing to contribute. The governability principle remains: building upon small teams of people who are personally loyal to Netanyahu. The three were mentioned because they were his most loyal ministers and enjoyed strong support in the Likud’s base. In this visit, Netanyahu promised to establish a Ministerial Committee to Deal with the Infiltrators. He also promised the residents of south Tel Aviv – his local base – that they would be invited to participate in the committee’s meetings. He envisioned a committee that would meet on a regular monthly basis. However, the committee met only once, on September 7, 2017. Ministers Deri, Shaked, Akunis and Eli Cohen (Economy), and Deputy Finance Yitzhak Cohen (Finance) were present, together with representatives of south Tel Aviv. The prime minister opened the meeting by saying, “We are here in order to ease the suffering of south Tel Aviv because of the illegal infiltrators. Our primary and central purpose is to expel as many of them as we can from the State of Israel. They have no right to be here. They should not be here and with our joint effort, they will not be here.”[[16]](#footnote-16)

There are a hundred thousand illegal immigrants in Israel, the majority of whom come from Eastern Europe. Why should the special committee invite only right-wing representatives of south Tel Aviv and focus only on the suffering of three neighborhoods there? And is it collaborative governance to invite local activists to participate in such meetings? Since the committee met only one time, these questions remain unanswered. It was, in short, a declarative committee rather than a policy-oriented one. It was expressively designed to give an impression of political action, while in fact the forum was ill equipped to make decisions and supervise processes on the ground. It was a case of identity politics rather than immigration policy. Instead, the work on immigration policy was conducted by the small team around the prime minister – and by the Supreme Court, which sent the policymakers back and forth to design policy within the bounds of liberal democracy, as we discuss below. In terms of governability, we are left with a dominant leader, but leader of the people who embody a tiny part of the population – local activists, Facebook followers and loyal politicians. Thus, when Netanyahu suspended his UN agreement, the reactions grew even harsher. But when he capitulated the next morning, overturning his policy of the night before, he received the blessings of his ministers. However, they also demanded the opportunity to vote on this issue (in the government cabinet, not in the Knesset). But a vote was never held and there is still no policy today.

1. **We, and only we, the people**

As noted, when introducing the UN agreement, the prime minister avoided using any description of the Africans, such as “asylum seekers,” “work immigrants” or “infiltrators.” This is in a stark contrast to his own repeated characterization of these people as “illegal infiltrators.” This terminology is Netanyahu's standard usage, especially when speaking to his “base” – Likud activists, south Tel Aviv residents, his government and his self-presentation in Facebook. Where does the term “infiltrators” come from and why does Netanyahu insist on double negation: infiltrators – those who entered the country without permission, and illegal – implicating them as potential criminals? And who, in contrast, are “the people”?

The Prevention of Infiltration Law was enacted in 1954 to secure Israel’s borders against armed terrorists (*fedayeen*) from enemy states.[[17]](#footnote-17) The law specifically cites Egypt, Lebanon, Syria, Saudi Arabia, Jordan, Iraq and Yemen as countries whose citizens or residents are considered infiltrators (*mistanenim*) if they enter Israel “knowingly and unlawfully” – regardless of the reason for their entrance.[[18]](#footnote-18) Adopting the same term – infiltrators (*mistanenim*) – more than sixty years later evokes the national memory of the *fedayeen* period and assigns anti-terrorist sentiment to the new “infiltrators,” suggesting that they too are here to threaten the state and harm its citizens. The double-negation “illegal infiltrators,” used regularly by Netanyahu, makes a connection between unlawful entrance and criminality, suggesting that the infiltrators are liable to commit theft, rape and murder once in Israel.

The conceptual battle is, of course, central in defining two major issues: first, who is an Israeli citizen and who is not; second, what is the motive, and hence the appropriate treatment, for attempting to enter Israel illegally. The issue has become so divisive that one can distinguish between the left and the right by the terms they use. While right-wingers, including the prime minister, favor the term “illegal infiltrators” and demand deportation, leftists tend to use “asylum seekers” or “refugees,” and advocate for their rights.[[19]](#footnote-19) However, the conceptual battle, as well as the social reality, is more complicated. It is so critical because it is a struggle for “the character of this country,” as Sa’ar defined it. The Africans, in many ways, are the ultimate “others” in Israeli eyes: non-Jewish, non-Zionists, non-Israelis, non-citizens, non-white, non-OECD, non-democratic and non-Start Up Nation. By defining who is not a citizen, we define who is one and how the state should treat its non-citizens.

Israel was one of the initiators of the UN definition of refugees. In 1954, it signed the Universal Declaration of Human Rights, which asserts: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”[[20]](#footnote-20) Indeed, the Jewish people can be seen as the ultimate refugee nation, the victims of industrialized genocide in the Holocaust. The struggle to bring refugees to Palestine and establish a sovereign Jewish state was fundamentally a battle over collective identity. Today, civil rights organizations expect Israel to act generously toward African refugees in light of the Jewish people’s history as refugees. As noted, however, the pro-deportation organizations draw from another national memory of the young state of Israel when labeling the refugees “infiltrators.”

Then again, social history is complicated. First of all, if the definition “infiltrators”’ refers to those who entered the state without permission, then the vast majority of the immigrants from Africa are indeed infiltrators. Second, not all asylum seekers are considered refugees. A person may enter the country as an asylum seeker and apply for recognition as a refugee, but not all applicants are awarded refugee status with all the attendant rights. There are two principal ways of receiving refugee status: 1) through collective recognition of a group of asylum seekers who immigrated directly from countries where their lives are threatened; 2) through individual recognition of a person’s request to receive refugee status because he or she is personally under the threat of persecution. Third, many of those fleeing East African countries are looking for a better life and better work opportunities. Many of them actually hope to become foreign workers in OECD countries. Thus, three different questions are involved: whether one entered the country illegally; whether one is a refugee; and whether one seeks to become part of the work force in the country. The answer is affirmative to all three questions for most of the Africans in Israel: They entered Israel illegally, seek asylum and hope to receive a work permit and settle in a developed country where they can better provide for their families. The chosen definition – and the chosen narrative – are a manifestation of the compartmentalization of identity.

The government itself needs to formulate policy on all three questions, independently and in relation to one another. As we have already seen, from Bennett’s perspective there is a clear government policy: Infiltrators are immediately deported from the country, refugees (a handful of them) are given full rights and work migrants are deported to a third country. Israel has so far recognized the collective right of Darfurians as refugees, and approved 11 of 6,500 applications from other Africans. (More than twice as many applications have yet to be processed.) In this view, there is no “asylum seeker” status – you are either a refugee (and over 99% are not) or you are deported.

From Netanyahu’s perspective, the first question was addressed by building the border fence, which reduced illegal migration from African states to a trickle. While he aspired to “expel all of them from the country,”[[21]](#footnote-21) he explained that because of legal constraints the only viable solution was deportation to a third state. However, the Supreme Court conditioned this on the deportees’ willingly to leave Israel for a third state. The next solution was the UN agreement, which called for deporting half of them and granting residence and work permits to the other half. But the prime minister abandoned this realistic, policy-oriented and economically sensitive perception in favor of the stronger narrative of deporting all illegal infiltrators, despite the clear consequence: all 35.000 would remain in Israel. Apparently, politics was more important than policy in this case, and reality gave way to the best story. At the end of the day, Netanyahu’s government made its choice vis-à-vis the Africans in Israel: They are illegal infiltrators and must be deported, except for a handful of approved refugees.

Another question, no less interesting, is – Who is the “people” that Netanyahu purports to be serving? In the next chapter, we analyze this question in depth; for now, however, it is clear that the infiltrators do not share any of the defining characteristics of the “people” – they are not Jews, Zionists or Israelis. At the press conference, Netanyahu described himself as acting in the national interest, devising the best possible policy on behalf of the people of Israel. When he spoke of his struggle to build the fence, he portrayed himself as a leader defending his people – all of the citizens of Israel. But once Bibi caved in to Bennett and Sa’ar, and a few dozen talkback commenters, the “people” changed. At the meeting the next morning (April 3, 2018), the representatives of the “people” reflected a much narrower perspective of peoplehood: Likud party activists, pro-deportation residents of poor south Tel Aviv neighborhood and a few right-wing politicians.[[22]](#footnote-22)

The ministerial committee that Netanyahu had established to deal with the infiltrators, and which met only once (on September 7, 2017), focused on a single issue: the distress of the local residents living in close proximity to the infiltrators. It was not a committee to assess security at the borders or the economics of the immigration. Its mission was not to coordinate the policies of the finance, interior, welfare, health and education ministries. There was only one perspective: the life of Jewish Israelis living in three neighborhoods in south Tel Aviv; not the 35,000 asylum seekers, but the poor residents who suffer in their presence, and them alone. The committee’s sole concern was the nationalist right-wing electoral base and their local, vocal representatives, who became metonymic with the people of Israel.

However, the definition of collective identity does not end here. Crucial for understanding the complexity of the case are those who work with the illegal infiltrators – and hence threaten “the character of the State of Israel.” In the discourse of the “people” – the local activists, the politicians, the pro-deportationists – it is clear who is aiding and abetting the infiltrators: the civil rights organizations, the New Israel Fund, the Supreme Court, the left and the media.[[23]](#footnote-23) They are designated as pro-refugee and enemies of the people. Thus, on the day Netanyahu overturned his own agreement he wrote on his Facebook page:

The central agent that put European pressure on Rwanda’s government to withdraw from the agreement to remove the infiltrators from Israel is the New Israel Fund. The New Israel Fund is a foreign organization that receives funding from foreign governments and sources hostile to Israel like George Soros. The fund’s ultimate goal is to erase the Jewish character of Israel and turn it into a state of ‘all its citizens,’ alongside a Palestinian nation-state clean from Jews,, on the 67’ borders with Jerusalem as its capital … I therefore asked the chairperson of the coalition, Dudi Amsalem, to lead a process to establish a parliamentary commission of inquiry on the activity of the New Israel Fund, which endangers the security and the future of the State of Israel as the nation-state of the Jewish people.[[24]](#footnote-24)

On the day the prime minister cancelled the only possible agreement with the UN, effectively leaving Israel with no immigration policy, his most urgent concern was to establish a parliamentary commission to investigate an NGO that works to empower minorities and safeguard civil rights. The aim was clear: divert the fire toward an enemy the nationalist right could unify against and target. Rwanda’s deputy foreign minister said in response that his government had never heard of the New Israel Fund.[[25]](#footnote-25)A week later, Ran Baratz, one of Netanyahu’s ideologues, further explicated on Israel’s *Meet the Press* program: “There is no other institute so hostile and conspiratorial that damages Israel like the NIF … I can characterize it in two ways: the fund does not like anything that is connected to traditional Judaism or Jewish nationalism, but likes Palestinian nationalism very much, and second, they do not like Israeli democracy and prefer what [Shlomo] Avineri has called *bagatzizatzia* [the predominance of the High Court of Justice] … the conclusion is that the fund rejects Israel as Jewish and as democratic and therefore there is no better example of post- or anti-Zionism.”[[26]](#footnote-26) Baratz aided the prime minister in crystallizing the Schmittian foe and friend ideology: The NIF, which supports a plethora of self-empowering voices of minorities and, along other aid organizations that assist the Africans in Israel, was designated as epitomizing the foe-friendly post-Zionist left. Its central ally – the Supreme Court. The “we” versus “them” distinction was now clear: The ultimate strangers are the asylum seekers who infiltrated the border illegally and are attempting to change Israel’s character. Those who fight for their rights – the courts and NGOs – are attempting to make Israel a non-Jewish state and hence are enemies of the people. It is important to note that this analysis appears on the official Facebook page of the prime minister, was not only disseminated by talkback commentators and activists.

1. **The Ideological Tensions: Between Neoliberalism and Neoconservatism**

The ideational components gathered so far – from both the conceptual analysis of governability and the identity core – disclose an interesting relationship between the leader, the people and his style of ruling. On both sides of the policy flip-flop, Netanyahu maintained a strong perception of himself as a leader of his people – citing national interest in the UN agreement and pandering to “his” people, his “base” with its cancellation. The reduction of mediating institutions – the parties, government, civil service, experts, political actors – to loyal teams of politicians and hand-picked functionaries is also a feature of what emerged as the main ideology – populism. Three tenets characterize populism: people, anti-elitism and nativism. We saw already that the moment Netanyahu turned away from the UN agreement, he pointed to the “old” elites – the Supreme Court, the New Israel Fund, the left and the media – as enemies of the people. The third component – nativism – is perhaps the most striking in the case of the “illegal infiltrators” because they are the ultimate others, the non-natives *per se*. Populism is therefore well manifested in Netanyahu’s ideology towards immigration.

However, populism is often studied as a thin-centered ideology[[27]](#footnote-27) – that is, as an incomplete ideology that can be coupled with other ideological core concepts to create a fully-fledged political ideology. Hence, in order to discern the full ideological core in regard to the illegal immigrants, we need to analyze the greater policy picture. What were Netanyahu’s policy arguments when presenting the UN agreement? What were his arguments for dismissing it? In what ideological family do they place his worldview? Neoliberalism, neoconservatism or plain populism after all?[[28]](#footnote-28)

In expounding the background for the UN agreement and the migration of Africans to Israel, Netanyahu noted: “Israel is a very developed country, and the only developed country to which one can walk on foot from Africa.”[[29]](#footnote-29) His analysis clearly focused on the economic reasoning – work migration. Deri, the minister of interior, explained that along with the deportation of 16.250 people by the UN, the other 16.250 Africans would be dealt with as follows: “We will make job plans (work policy) so they can move to other places where their work is needed.”[[30]](#footnote-30) So the overall rationale for their migration and for the policy plan proposed by Netanyahu and Deri was clearly economic: They entered Israel to find work and should be dispersed – that is, moved from south Tel Aviv to other places in Israel where their work force is needed. In addition, the money Israel would save thanks to UN funding and by closing the Holot detention camp (which cost 250 million shekels) could be invested in rehabilitating south Tel Aviv. Thus, it was an economic-driven analysis that viewed global migration in the context of a market economy and accommodated it via an Israeli economic plan that requires foreign work.

Indeed, the analysis of illegal migration in the democratic world is anchored in liberalism, with its two feet: an economic analysis of demographic migration, and rights for refugees.[[31]](#footnote-31) The economic analysis considers the attraction of the developed countries for poor migrants who seek to improve their lives, as well as the economic grievances of the disadvantaged populations in the receiving countries. Indeed, one of the major indicators of extreme-right voting and the xenophobic right is the idea that the immigrants are taking jobs away from the “people.” Here is where the link between economics and society twists: While the neoliberal argument focuses on macroeconomics and views rational individuals as the prime actors, the right-wing perspective views illegal immigrants as an economic and social threat.

It is noteworthy, therefore, that while Netanyahu used the economic rationale to explain the Africans’ migration to Israel, and his followers stressed arguments related to the job market, the third economic level – the need for foreign workers and cheap labor – was conspicuously missing from the prime minister’s discourse. This is because the economic reasoning created a fundamental conflict that should be examined from two perspectives. On the one hand, the immigrants residing in south Tel Aviv are usually employed in jobs that Israelis refuse to do because they demand long hours and pay little money. It is clear from police and criminal records that once they are employed, the levels of disorder (drinking, theft, etc.) go down. So, to complement the economic policy, it is evident that once they have migrated into the country, it is economically better – both for them and for the state – if they work. This is the classic neoliberal ethos.

However, on a macro scale, the levels of illegal migration fluctuate in direct relation to the prospect of work: If there is an Israeli policy to employ them, the incentive rises and many more Africans attempt to reach Israel. Conversely, if they are placed in a detention center or not allowed to work, the numbers of the immigration decline. The neoliberal ethos, of market-driven human behavior, thus produces the incentive for increased migration, rather than absorbing those who have already settled in the country. This can be seen in the fluctuations of the number of migrants before the fence was erected.[[32]](#footnote-32) If, therefore, neoliberalism is only a partial ideology because the employment of illegal workers stimulates additional waves of migration, then what is the ideological core that complements it?

From a non-economic perspective, illegal immigrants are perhaps the key social factor that leads moderate conservative parties to adopt extreme xenophobic ideology. We see the same neoconservative ideological core on the rise in other right-wing governments facing illegal immigration. Neoconservatism has two fundamental concepts: securitism and criminalization. The immigration policy in Canada is a case in point: “The concept of criminalization not only refers to the imposition of penal sanctions, but also speaks to the development of a culture of suspicion towards asylum seekers, who are discursively tied to fraud, human trafficking, crime and terrorism; in short, they are portrayed as posing a threat to society.”[[33]](#footnote-33) These two tenets – securitism and criminalization – are also immanent in right-wing discourse in the Israeli case. Thus, Miri Regev, the minister of culture and sport under Netanyahu and a loyal foot soldier of the prime minister, called the Sudanese immigrants “a cancer in our body” and vowed that “we will do anything to deport them back to where they came from.” She also attacked “the leftists who petitioned the Supreme Court. They should be ashamed; they stopped the deportation. We will not let them climb on our back … ‘the poor of your city should come first.’ With all due respect to the left and Peace Now, they are the reason our country is in the state it is. Because of their petitions to the court, we cannot deport the infiltrators to their country of origin.”[[34]](#footnote-34) The U.S. State Department’s 2011 report on human rights practices noted:

Government officials often negatively referred to asylum seekers as “infiltrators.” According to NGOs, officials periodically characterized asylum seekers as directly associated with rises in crime, disease and terrorism. On December 8, in an interview with Army Radio, Minister of Interior Eli Yishai said, “I will safeguard the Jewish majority of the state, and I ensure that the last of the Sudanese, and the Eritreans, and all of the infiltrators, to the last of them, will return to their countries.[[35]](#footnote-35)

Again, this discourse was not confined to the extreme right; it came from the most senior ministers in Netanyahu’s government. As explained by one political analyst, “Netanyahu is the one who provides a tailwind to his party members to use racial expressions against the foreign immigrants, thus creating political parallelism between right and left on the issue. In favor of rights for refugees? Then you’re a leftist. In favor of deporting the infiltrators? Then you’re a right-winger.”[[36]](#footnote-36)

1. **Our Natural Partners – Realigning the Party System**

The Netanyahu government’s attitude towards the illegal foreign workers demonstrates the dynamic of creating a revised right-wing ideology. At the ideological level, the prime minister was torn between his neoliberal conceptions and the economic analysis of the situation. However, it was the greater project of cementing what he calls “the natural alliance” between the Likud and its “natural partners” – the religious and ultra-Orthodox parties – that explains Netanyahu’s political choices. In this analysis, the infiltrators are the ultimate “others.” They are not just complete foreigners – Africans, blacks, many of them Muslims; they also play a key role in uniting the new right in its primary neoconservative mission: saving the Jewish people. On issues like the annexation of the occupied territories, which has been the dominant left-right axis in Israeli politics since the 1967 war, the ultra-Orthodox parties generally sit on the ideological fence. However, the ethno-religious approach towards the infiltrators and the mission of safeguarding the state’s Jewish majority became a top priority for ultra-Orthodox politicians like Yishai. The discourse against the infiltrators, driven by an extreme-right ideology, became a central doctrine of the right after it was framed as a mission to protect the Jewish character of Israel. It also serves to demarcate who is loyal and who is a traitor, who is in and who is out, crystallizing the boundaries of right versus left. The right includes the saviors of the Jewish state – the Likud, the religious and ultra-Orthodox parties; the left are those who adopt the discourse of individual rights and universal values, protect the infiltrators and use the Supreme Court to place their rights before the national rights of the Jews. As the ideologue of the Nation-State Law stated, echoing Netanyahu’s own words: “The situation in which, as it stands today, according to Israeli rulings, the right of an illegal infiltrator to roam the streets of Israel is a constitutional right, whereas the right of a Jew to immigrate to Israel is not, is a complete disgrace and should be changed.”[[37]](#footnote-37) Such structural change – constitutional, ideological and political – is the focus of this book.

**Chapter 2**

**State of Which Nation? The Zionist Constitutional Revolution and the Nationalization of Law and Education**

Just before the April 2019 elections, the first of three elections in one year, Ayman Odeh, the head of the Joint List, a predominantly Arab party, told us: "Of course Israel is the nation-state of the Jews. There, you have it. Now give us full civic and social rights. Okay?"[[38]](#footnote-38) It is noteworthy that he said “civic and social” rights, not “political” rights – the basic democratic equality of fully participating in elections. Perhaps this is because Arabs in Israel already have the right to participate in elections and in fact exercise this right. But “political rights” in the Israeli discourse may also refer to Palestinian national rights, a divisive issue between Arabs and Jews in Israel and among Arab Israelis themselves. Yet, if the head of the dominant Arab party accepts Israel as the nation-state of the Jews, why did the Basic Law: Israel as the Nation-State of the Jewish People, the jewel in the crown of Netanyahu's governments, become such a divisive issue, one that changed constitutional, ideological and political structures? How did it evolve from a consensus issue among the majority of Israelis and certainly in the Knesset, to a law that narrowly won Knesset approval and sparked widespread criticism? (Dissatisfaction with the law helped to boost the new Blue and White party, which won the largest number of votes in the first two elections of 2019. Blue and White publicly supported the Druze rebellion against the Nation-State Law.) And which “nation” does the Israeli state serve – a nation of all its citizens, or a nation of the Jewish people alone?

This chapter follows the debate concerning the Nation-State Law and its transformative influence on the realignment of the ideological axes, the changes in the party system and the constitutional challenge – in particular, the question of whether Israel is still an embedded democracy after enacting this new basic law. The law’s expression in the ongoing revolution in civic and democratic education in Israel demonstrates the profound change that Netanyahu’s government has induced in Israel’s discursive, ideational and public consciousness. The public discourse has undergone a fundamental change and the central question is now: Are you for or against Jewish democracy? If you voice any reservations, then you are an enemy of the (Jewish) people.

1. **Ideological Realignment of Israeli Politics: A Decade with Five Historical Junctions**

In order to understand the magnitude of the fundamental transformation encapsulated in the debate over Nation-State Law, it is crucial to examine the way Israeli politics is comprehended – by both the media and scholars. The three main conventions are: 1) the dominant ideological axis in Israel is the Arab-Israeli conflict; 2) the distance between the left and the right is not far; and 3) political change will come from the center. The politics of identity and its cornerstone, the Nation-State Law, challenges all three conventions.

Representative democracies are best defined as party democracies,[[39]](#footnote-39) and party systems are analyzed on the left-right continuum. In Thomassen’s words, “A basic condition for party democracy is that their party preferences are manifested and represented on one ideological axis.”[[40]](#footnote-40) The left-right axis proved resilient throughout the years; as new political issues arose, it was flexible enough to become relevant time and again.[[41]](#footnote-41) In most Western democracies, the main ideological controversy is on the political-economic axis – between neoliberalism and social democracy. The widely accepted convention about Israeli politics is that the dominant left-right axis expresses the range of views on security matters, and that after the 1967 war, and in the wake of the transition in power from Labor to Likud in 1977, the dominant left-right axis is encapsulated in regard to the Israeli-Palestinian conflict: for or against a two-state solution.[[42]](#footnote-42) While the socio-economic axis has negligible influence on Israeli party politics, the other ideological dimension crucial for understanding Israeli politics is the relationship between religion and the state. The religious and ultra-Orthodox parties were careful not to align themselves on the conflict with the Palestinians. Rather, the religious parties focused on state-religion relations and as long as their demands on this axis were fulfilled, they could join coalitions led by either the left or the right. Religious parties are hence portrayed as pivot parties. It is my contention that these conventions have thoroughly changed under Netanyahu’s governments: The defining ideological axis in Israeli politics is now collective identity – Jewish vs. democratic; the religious parties have undergone an ideologization process that places them at the extreme right, a process reflected in Bibi’s phrase “natural partners”; and Netanyahu has radically transformed the right from national and liberal to neo-conservative and anti-liberal, hence changing the right’s position on the ideological axis of Israeli politics.

Five historical junctions typify the last decade and a half of identity politics that has transformed the Israeli party system, culminating in the Nation-State Law and polarizing the polity.

1. The People Demand Social Justice: The New Israelis

The first junction is the 2011 social protest in which hundreds of thousands of Israelis took to the streets, around the same time that the 99% and Occupy Wall Street protests gained steam overseas. The high cost of living, housing prices and cheese products captured the headlines, and most experts interpreted the protest as a response to the deterioration of the welfare state.[[43]](#footnote-43) However, the social protest was instrumental in three other regards. First, its main demand from the government was for public policy. The leaders of the demonstrations complained that Israeli politics is divisive, and that those who have leverage over the coalition – the pivot parties – are the ones that receive funding. The government, argued the protestors, practices a policy of divide and rule, catering to the demands of the religious sectors, the ultra-Orthodox, the settlers, the Russian immigrants, while failing to produce policy that serves the general public interest. The protest was therefore a plea to move away from identity politics to a focus on the common good. A decade later, this translated into Blue and White’s slogan of “Israel before all else,” emphasizing the need for *mamlachtiyut* – placing the national interest above party politics. Second, the social protest produced a new language for Israeli politics. Itzik Shmuli, then a leader of the protest, later a leading politician for Labor and today the minister of welfare in the Netanyahu-Gantz unity government, introduced the term “the new Israelis” and spoke at the demonstrations of a common struggle uniting all Israelis:

Good evening to you all. Good evening to the soldier from Afula, the student from Jerusalem, her parents from Degania, the policeman from Beersheba, the teacher from Taibeh, the immigrant from Ariel, the retiree from Netanya, the homeless person from Holon. Good evening Israel! This struggle touches upon many, too many, problems of Israeli society … the common pain is breaching the high walls that have arisen in Israeli society and clouds its glory. No more Jews against Arabs, secular against religious, leftists against right-wingers. The high costs of living hurts us all (Shmuli, 2011a).[[44]](#footnote-44)

Shmuli condemns the walls between Jews and Arabs, secular and religious, left and right, calls for creating a singular Israeli identity. “The people demand social justice” was indeed the slogan of the protest, but who was this alleged “people”? In the “March of the Million” rally, Shmuli said: “Mr. prime minister, look at us well: we are the new Israelis” (Shmuli, 2011b). This is an attempt to redefine the people – no longer the Jewish people, but all Israeli citizens. A new subject emerged. The “system” that the protestors demonstrated against was the political system – the over-representation of the sectorial parties. The social protest vehemently avoided being identified as representing a particular sector – not even the middle class – and insisted on defining themselves as “the new Israelis” (Leaf, 2011e).[[45]](#footnote-45) As long as they spoke in the name of all Israelis, fought for a collective agenda anchored in Israel’s Declaration of Independence and used the symbols of sovereignty – the flag, anthem and the Knesset – the protest sought to redefine Israeliness in an inclusive and civic way. It was also a call for a different type of politics – politics of public interest, not on behalf of an elite, sector or class.

Another ascendant politician at the time was Yair Lapid. As a publicist and media figure, he stressed the concept of “the Israelis,” criticizing the government’s divide and rule strategy. Lapid said: “I believe in Israel and I believe in Israelis.”[[46]](#footnote-46) Out of the social protest, the concept of Israeliness emerged that would recreate the ideological axis on which the parties competed in the next election and throughout the decade to follow. It remained completely silent on the main axis that had previously determined Israeli politics: the Israeli-Palestinian conflict and the two-state solution.

1. Israeli versus Jewish: Realigning Identities

The 2013 elections were the second junction in the struggle over collective identity, a struggle that is key to understanding contemporary Israeli politics. For the first time, Israeliness appeared as a major issue, challenging “tribal” identities and parties. The identity axis shifted from a particularistic Jewish identity on the right to an inclusive Israeliness on the center-left. While the newly formed Yesh Atid party, along with the newcomers to Labor – Shafir and Shmuli, the leaders of the social protest – chose to put Israeliness as the key concept in their agenda, what was the Likud’s strategy? After all, coming from a nationalist-liberal tradition, there was no problem for the ruling party to actually adopt the same discourse of Israeliness. However, Netanyahu did not take this route.

The Likud joined with Yisrael Beitenu to form the Likud-Beitenu list for the 2013 elections. The initial campaign slogan of the joint list, which chose not to publish a manifesto, was: “Israel – Jewish and strong.” No more Jewish and democratic. The longstanding consensus among Jewish Israelis, ever since the state’s Declaration of Independence, was that Israel is both Jewish and democratic. This consensus was abandoned by the right in the 2013 elections and democracy was sacrificed on the altar of Judaism. The main electoral threat to achieving a Likud victory came from the far-right parties, not from the left. Therefore, Netanyahu chose a purely Jewish campaign. The strength of Israel is in its Jewishness, which overrides its democraticness. The Likud-Beitenu’s decision to focus on Jewishness was conspicuous in its media campaign: “Jewish values cannot be uprooted from the people of Israel as the people of Israel cannot be expelled from the Land of Israel. We are strong and resolved to maintain here a Jewish state, now and forever” (Netanyahu, 2013). With the Western Wall in the background, Netanyahu concluded: “We are proud of the Jewish people. We are proud of the Jewish state. We take pride in our tradition.” He thus turned the Likud discourse from the national-liberal to the Jewish-religious. He also portrayed himself as the leader of the Jewish people.

Netanyahu’s “natural partners” were also his chief competitors for voters in 2013. Consequently, the prime minister sought to portray Likud Beitenu as the more Jewish choice – that is, it would give more support to religious institutions and settlements in the territories. Yet this ideological choice of emphasizing the religious (rather than the national) in its identity outlook wiped out the liberal-national wing of the Likud in the party’s primaries. A growing number of Likud party members and central committee activists, unlike the actual voters on Election Day, were from the religious-national community and settlements, and wielded increasing power over the party. In short, the ruling party turned from a Jewish-national path to a liberal-national one.

Fascinating in this regard is the leader of the Jewish Leadership faction in the Likud, Moshe Feiglin, who stated: “The axis of the debate is not left versus right, It is not territorial. It is an identity-based axis: Jewish versus Israeli.” A Jewish-before-democratic orientation was evident throughout the term of the 2009-2013 government, with backbenchers from the Likud and Yisrael Beitenu promoting anti-democratic legislation and an agenda identified with the (Jewish) majority’s understanding of democracy. The Nation-State Law is the salient example. The settler-led Institute for Zionist Strategy originally drafted the legislation for MK Yuval Diskin, then still a member of the Kadima party. Diskin later defected from Kadima to Likud and brought the proposed Nation-State Law with him as a dowry. As the Jewish-before-democratic agenda became the ruling party’s ideology in the 2013 election, the legislative proposal was incorporated in the coalition agreement between the Jewish Home party and Likud Beitenu.[[47]](#footnote-47) The party system was thus realigning along the Jewish versus Israeli ideological axis and the Nation-State Law symbolized the new polarization of the party system.

1. The ‘Bros’ Alliance’ – Jewish and National?

The 2013-2015 government was short-lived, even by Israeli standards. Two key partners in the coalition were the “bros” Lapid and Bennett. Both had resuscitated parties with illustrious histories – Shinui and the National Religious Party (NRP), respectively. Lapid's father had led Shinui in its heyday. The party espoused economic liberalism and stridently opposed the ultra-Orthodox. Bennett took over the dysfunctional NRP, the historical home of the Orthodox Zionist camp. Influenced by the social protest of 2011, both put a high-tech gloss on their revived and renamed parties, using social media and vibrant campaigns to speak to the newly politicized middle classes. They both also employed the discourse of Israeliness, and viewed the IDF as its cornerstone. Lapid, the media personality, built himself and his party, Yesh Atid, on the second wave of the protest in 2012, which focused on the unequal conscription law that exempted ultra-Orthodox Jews (as well as Muslims) from military service. Lapid demanded that those who give more to the state should receive more, the classic republican ethos. Bennett’s campaign featured advertisements asking: “What is a Jewish home for you?” and “What is the Sabbath for you?” This was an attempt to associate all Jewish Israelis (including those who go to watch soccer on Saturday) with the Sabbath and with the religion – or tradition. This was a double game, however, strengthening Jewish-cum-religious identity but distancing the state’s non-Jewish citizens from affiliating as Israelis. The Jewish Home party also stressed the IDF as the mainstay of shared Israeliness; the party even used Photoshop to place yarmulkes on the heads of combat soldiers in campaign posters. Bennett and his partner Shaked, the power couple of Israeli politics in the decade to come and the ideological spearhead of Netanyahu's governments, joined with Rabbi Avichai Rontzki in 2012 to form a political organization called “Israelis.” Both Bennett and Shaked had served under Netanyahu in his years as the head of the opposition, but both were rejected by Bibi’s wife, thus blocking their entry into party politics via the Likud. Instead, they used the Jewish Home party platform, while hoping to ultimately create a right-wing alternative that extended beyond the religious camp. They adopted the “Israelis” program as Jewish Home’s election manifesto in 2013. This included opposition to a Palestinian state, as well as a call to curtail the power of the Supreme Court and infuse the judicial system with *halachic* rulings. These ideas, along with other tenets of neo-conservative thought, became the essence of Netanyahu’s fourth government.

So how did the anti-religious Yesh Atid and the Orthodox ethno-religious Jewish Home end up in an alliance that vetoed the inclusion of the ultra-Orthodox parties and forced Netanyahu to create a coalition with them? Both parties positioned themselves as representing the educated middle class; they touted neoliberal conceptions of the free market and adopted an anti-union stance. The focus was on policy and leadership, with an emphasis on personalization – Lapid and Bennett as the rulers of their respective parties. The most important element was the republican ethos: Both parties emphasized the obligations/rights discourse and sought a wider definition of Jewishness. Bennett took the ethno-religious angle, while Lapid’s party, with Rabbi Shai Piron, Ruth Calderon and others, hoped to develop Judaism as a culture, wider than religion.

The Yesh Atid-Jewish Home alliance also served the electoral purpose of positioning their parties as center-right, where they thought most of the floating votes reside. This corresponds to the conventional assumption that change in Israeli politics can only come from the center. This was true in the past in regard to religious pivot parties, and it became the desired niche of centrist parties that actually strived to be part of the government and not only to serve the people in the Knesset or in the opposition. This strategy worked, initially, for the third Netanyahu government. However, the alliance soon collapsed. A major catalyst for this collapse was the Nation-State Law.

Nationalism without equality was unacceptable for Yesh Atid and other centrist and leftist parties. But this was precisely what the Jewish Home sought in championing the Nation-State Law, a basic law that would give national rights to Jews only. The proposed legislation, which, as noted, came from the centrist Kadima party, was now wholeheartedly adopted by the right. In 2014, MK Shaked (Jewish Home) and MK Ze’ev Elkin (Likud) proposed two extreme versions of the basic law. Shaked – the future minister of justice in Netanyahu’s fourth government – inserted a clause stating: “Israel will be established on the foundations of liberty, justice and peace according to the vision of the Jewish prophets and committed to the personal rights of all its citizens as described in any basic law.” Shaked obviously sought to counter the critique that the Nation-State Law was anti-democratic. In her interpretation, however, the values of liberty, justice and peace are no longer universal values, but Jewish values of the Prophets, and the rights accorded to all citizens are “personal rights” – not civic or political. In one of her famous speeches as justice minister, Shaked argued:

In 2017, Israel, a state whose constitutional regime is composed of human rights, without any mention in its basic laws of it being the nation-state of the Jewish people, Zionism has become the dead zone of its laws … Zionism should not continue – and I declare here, will not continue – to bow its head to the system of civic rights interpreted in a universal manner, in a way that disconnects it from the protocols of the Knesset and the historical legislation we all know.

Shaked was wishing for exactly what Lapid feared: changing the constitutional balance between human rights and the state’s Jewishness: Jewish first, human rights later. The internal battle in the 2013 coalition produced a strange compromise. The ministers lobbied to pass the basic law in its more extreme version. Netanyahu offered a deal: The government would approve the more radical version of the Nation-State Law promoted by Elkin and Shaked, but once the Prime Minister’s Office presented a proposal of its own, they would support it. The legislation passed its first reading on November 19, 2014. Netanyahu failed to put forward an alternative proposal until 2018. Meanwhile, the extreme version of the basic law remained the government’s approved decision. Furthermore, the commitment to the Nation-State Law not only precipitated early elections in 2015; it became the first tenet of the right-wing coalition that ensued.

As the animosity between Netanyahu and Lapid, his finance minister, grew, the disagreements regarding the anti-democratic legislation led by the Likud and Jewish Home became unbridgeable. The proposed Nation-State Law omitted any mention of Israeli democracy or political equality for all Israeli citizens. This was a bold departure from the “Jewish and democratic” doctrine enshrined in the Declaration of Independence. It became a major reason for the collapse of the “bros” alliance and the third Netanyahu government. In less than two years, Israel found itself polarized on “Jewish and democratic” issues and on the way to another election.

1. Zionism, Anti-Zionism and the Delegitimation of the Left

The question of collective identity was the focal point of the 2015 elections that led to the formation of Netanyahu’s fourth government. If the people that demanded social justice in 2011 and the camp that politicized in its aftermath were the “new Israelis,” the right-wing bloc formed a united front as the “Jewish people.” Was this just a new manifestation of the seventy-year-old debate about state and religion? The issue of state-religion relations traditionally translates into party politics via the unique position of the religious parties as pivotal parties,[[48]](#footnote-48) and the debate over the status quo regarding religious issues such as public transportation on the Sabbath, the role of the rabbinical courts and civil marriage. But now it came to embody the tension between Jewishness as religion versus Jewishness as a national identity, and the implications of this question for Israeli democracy. As of 2013, the major debate was over the nature of Israeli democracy: Jewish or Israeli, democracy or ethnocracy. The question of religion-state relations was only a part of this debate. The role of religion in the state was primarily a sectorial issue of the religious parties, while the Jewish-democratic identity of the Israeli collective was an ideological issue that defined – and polarized – all the parties. In fact, it became the major battlefield in the 2015 elections.

The crucial struggles were on two issues: who is a Zionist, and collective rights.[[49]](#footnote-49) The struggle over Zionism took place after many decades in which the term was used almost solely by the settlers’ movement. However, the question whether Judaism is religious or national went all the way back to Israel’s Zionist roots. In many ways, Zionism – the national movement of the Jewish people in the late 19th century – was an anti-religious movement. It sought to transform Judaism from religion to nationalism by de-religiousizing it and by interpreting its religious practices in the context of the ancient Israelites, who formed one of the earliest nation-states in history. However, the Netanyahu camp challenged this transformation and the ethno-religious Jewish Home party led a counterrevolution that looked toward Judaism’s original religious roots, from which socialist, Revisionist and liberal Zionism sought to distance themselves. In any case, the purpose of Zionism was to bring the Jewish people back to its land. Therefore, Zionism was fulfilled once the State of Israel was established. It was more relevant vis-à-vis the Jews living in the Diaspora. The term “Zionism” was hardly part of contemporary political discourse in Israel over the last generation. It was appropriated by the settlers’ movement, which saw itself as the direct continuation of the Zionist movement. However, its settlements were beyond the Green Line (pre-1967 borders) and their ethos was religious-messianic. The settlement movement aspired to annex the entire biblical Holy Land, regardless of international law and agreed borders. The Institute for Zionist Strategy, which drafted the Nation-State Law, was founded by a former head of the settlers’ movement – Israel Harel. Zionism was long identified in the public discourse with the settlements, the religious-national parties and the hardcore ideological right, which opposed the two-states solution and lobbied for the annexation of the occupied territories.

The Labor Party’s surprising decision to run as the “Zionist Union” in the 2015 elections, together with Tzip Livni’s Hatnua party, marked the return of the Zionist question. The move was symbolically significant. Reclaiming Zionism had a crucial function in tying together the two ideological axes. Livni, the scion of a Revisionist family who quit the Likud when Ariel Sharon formed Kadima, was now creating a political alliance with Isaac Herzog, the son of a former president (Chaim Herzog) who represented the Revisionists’ historical rival, Mapai (the labor Zionist party that led Israel during its first three decades). Livni and Herzog established a political alliance based on their shared national-liberal worldview of national-liberalism and sought to reclaim the “Zionist camp” [the literal translation of the Hebrew name of their joint list]. On the Israeli-Palestinian front, they saw that two-state solution as the only way to maintain Israel as the nation-state of the Jewish people, recognizing that self-determination is a universal right that could not be denied the Palestinians. Even more instrumental for the internal Israeli debate, they argued that annexing the territories occupied in 1967 would mean absorbing 4.5 million Palestinians; Israel would no longer be a state with a strong Jewish majority, or might not remain a democracy at all. Thus, it was nationalism and liberalism that Livni and Herzog shared.

On the collective identity axis, they reclaimed Zionism from the far-right settlement movement and hoped to reinstate Zionism as a sovereign Israel acting with international recognition. It was no coincidence that Livni who the one who blocked the Nation-State Law from gaining a foothold in the center-left.

Once the new Zionist Union alliance announced its name, Netanyahu’s loyalists in the government launched a campaign aimed at portraying the Livni-Herzog camp as anti-Zionist. Thus, Miri Regev, minister of culture and Netanyahu confidante, said: “It is sad that a party tries to buy its way to power … via the V15 campaign. I have submitted legislation that would oblige NGOs to reveal their funding sources. The person who blocked the bill was none other than Tzipi Livni. I wonder why?”[[50]](#footnote-50) V15 was an NGO that campaigned for replacing Netanyahu but did not endorse a particular party. Its goal was to drive voter turnout in the anti-Bibi camp in the 2015 elections. Netanyahu and his ministers tried to delegitimize the Zionist Union by associating it with the V15 organization, portraying V15 as an NGO funded by “foreign state-like forces”’ and thus undermining Israeli sovereignty. Regev, Levin and others drafted a bill demanding that all civil rights associations working with Knesset committees reveal their funding resources. The alleged reason was to increase transparency, but only those NGOs funded by “political agents” were ordered to reveal their sources. NGOs funded by private donors were exempt. Many of the civil rights organizations in Israel receive funds from the European Union, party foundations in Europe or the UN. Most of the right-wing associations, however, are funded by private neo-conservative donors from the United States. It was clear that the main impetus of the law was to silence and embarrass civil rights organizations that are associated with the left and critical of the government.[[51]](#footnote-51)

Furthermore, Netanyahu and his supporters claimed that civil rights organizations funded by foreign governments or parties were infringing on Israeli sovereignty and as such were fifth-column enemies of Israel. The whole point was to delegitimate his political rivals – the center and left parties – and depict them as anti-Zionists in his voters’ eyes and in public discourse. Not only did civil rights organizations receive money from foreign political entities, but they usually took the side of the Arabs and protected their rights against the Israeli government. According to this argument, the left, by endorsing the cause of civil rights organizations, was in fact pro-Arab, anti-patriotic and the enemy from within.[[52]](#footnote-52) Thus, while the center-left was hoping to reclaim Zionism, the right was portraying it as anti-Zionist. The NGO Law was part of the anti-democratic legislation passed by Netanyahu’s government that linked democracy with anti-patriotism, drawing a wedge between “Jewish and democratic,” and breaking with the Israeli consensus of seventy yeras. Democracy – identified with civil rights organizations and the left – was working against the Jewish state, the right-wing camp argued.

In accordance with this worldview, Netanyahu agreed in the coalition agreement with the Jewish Home – the Likud’s junior and more ideologically inclined partner: to establish a committee to formulate a Nation-State Law that all coalition partners would be obliged to support (article 34);[[53]](#footnote-53) to consider an override clause that would diminish the Supreme Court power to declare unconstitutional any legislation inconsistent with the Basic Law: Human Dignity and Liberty (article 27); to politicize the civil service – allowing the political appointment of senior officials instead of the professional appointments that characterize the Israeli public sector (article 12); and to promote the NGO Law (article 83). The coalition agreement also called for allowing Israelis outside of Israel to vote in Israeli elections (article 28). The constitution of Judocracy was emerging. Judaism and governability were now the official program of Netanyahu and his “natural partners” – the religious and ultra-religious parties. It was a pure right-wing government, now that Yesh Atid and Livni were out. The only partner that was more liberal than ethno-religious was the Kulanu party, which garnered ten Knesset seats in the 2015 elections. Kulanu, led by a former Likud minister, Moshe Kahlon, was also the only coalition partner that was not committed to voting for the Nation-State Law. (The party voted for it anyway, in 2018.)

1. Israel Before All Else? The Nation-State Law and the Realignment of the Party System

If the Jewish vs. Israeli question was salient in the 2013 elections and Zionist vs. anti-Zionist claims rose to the fore in the 2015 elections, the focus in the 2019 elections turned to the Nation-State Law. The first political declaration by Benny Gantz, leader of the newly established Israel Resilience Party, was a promise to amend the Nation-State Law to address Druze grievances: “We not only have a blood alliance, but an alliance of life … I will do everything in my power to amend the Nation-State Law in a way that expresses the deep and unbreakable bond, not only in battle but in life.”[[54]](#footnote-55) While endorsing the Druze cause, Gantz and his partners did not support the Arab demonstrations against the same law a week later. Why was Gantz’s first foray into Israeli politics made in support of the Druze protest against the Nation-State Law? And why did he refrain from extending this support to the Arabs?

The 2013-15 government was dissolved over the Nation-State Law[[55]](#footnote-56) and the right-wing coalition formed after the 2015 elections enacted the basic law, defining the character of the Israeli state. The April 2019 elections marked the climax of this struggle over Israel’s collective identity. Israel’s Declaration of Independence had combined the historical motif of the Jewish people’s return to its ancient land with a commitment to extend civic, social and political equality to all citizens. In principle, all of the parties competing in the 2019 elections (with the exception of the Kahanist Jewish Power party) accepted both equal civic rights for all citizens and national rights for Jews in Israel. Even the Arab parties sought “full equality, national and civic, for the Arab-Palestinian public in Israel.”[[56]](#footnote-57) By demanding full equality for all, they signaled their acceptance of national rights for Jews (as well as for Arabs) in Israel. Indeed, the majority of Israeli citizens thought that the Nation-State Law should include the principle of equality.[[57]](#footnote-58) In light of the broad consensus for equality of civic rights for all citizens and national rights for the Jews, why did this become the most contentious issue in April 2019 election? There are two issues here: the question of legislating equality into a basic law, and the question of collective rights.

Equality was never stipulated in a basic law. Even in the Basic Law: Knesset, the phrasing is “every Israeli citizen above 18 is entitled to vote.” The concept of “equality,” the core principle of democracy, is not mentioned in any of the basic laws of the State of Israel. Equality was at the heart of the debate on the Basic Law: Human Dignity and Liberty, enacted in 1992. However, due to objections from the religious and ultra-Orthodox parties, the word “equality” was not even mentioned even in this basic law, which established a bill of rights in Israel’s evolving constitutional law. The religious parties vetoed the principle of equality on three grounds: They feared that the Supreme Court would revoke the Law of Return; that equality before the law would mean an end to draft exemptions for ultra-Orthodox yeshiva students; and that non-Orthodox currents in Judaism would be recognized, jeopardizing the Orthodox monopoly on issues of religion and state.[[58]](#footnote-59)

In fact, the ultra-Orthodox were unlikely supporters of the Nation-State Law. They had traditionally refrained from endorsing the Zionist cause, motivated by their belief that a Jewish state would be resurrected only after the Messiah appears. They were persuaded to support the law along the same lines that had ideologically allied them with the hardcore right in Israel: They insisted that the Nation-State Law include the Jewish people’s “religious rights” in the Land of Israel. Once religious rights were included, the Zionist revolution – which had transformed Judaism into Zionism, with nationalism supplanting religion – was overturned. The right-wing bloc – the Likud and its natural partners (the religious and ultra-Orthodox parties) – was unanimous in fully endorsing the Nation-State Law. An ethno-religious ideology was now uniting all right-wing parties, including Likud, Shas, Agudat Yisrael and the Jewish Home, which emerged as the great winner as the standard-bearer of national-religious Zionism. This bloc remain cohesive through three rounds of elections in 2019.

While there was unanimity on the “Jewish” front, the “Israeli” side of the party system rallied under the call for equality and rejection of the Nation-State Law. According to Gantz’s Blue and White election platform (its first ever and hence a constitutive document of the newly formed party, which sought to replace the Likud as the ruling party in Israel): “The Nation-State Law anchored the State of Israel status as the nation-state of the Jewish people, where it is uniquely exercising its right of national self-determination. However, the principle of equality of individual rights is lacking from it, and we will therefore enact it in basic legislation, in the spirit of the Declaration of Independence.”[[59]](#footnote-60) It is noteworthy that Blue and White does not commit to inserting equality in the Nation-State Law itself. The party could also fulfill this promise by adding the principle of equality to the Basic Law: Human Dignity and Liberty or other basic legislation. The Labor Party was much more adamant about legislating equality into the Nation-State Law. Its manifesto stated: “The Nation-State Law in its current format severely undermines the value of equality, which is a founding value in Zionism and in the moral basis of Israeli democracy. We are obligated to add equality into the Nation-State Law in order to allow all citizens of Israel – Jews, Arabs, Druze and Circassian – to be citizens with equal rights in the nation-state of the Jewish people.[[60]](#footnote-61) As for Meretz, the party sought to completely revoke the Nation-State Law “because it is based on the assumption that the non-Jewish citizens of Israel cannot realize their national rights within the framework of the democratic toolkit. This is a false assumption that undermines the State of Israel’s commitment to democracy.”[[61]](#footnote-62) Instead, Meretz called to enact the Declaration of Independence as part of Israel’s constitution. The platform of Hadash, one of the partners in the Joint List, advocated for “the complete revocation of the Nation-State Law, which is discriminatory and racist, and establishes concepts of apartheid”[[62]](#footnote-63) Figure 1 shows the axis of opposition/support for the Nation-State Law in April 2019.



*(the language in the graphic needs to be updated to match the language used in the edited text)*

Figure 1: The party system in April 2019 vis-à-vis the Nation-State Law

The “Israeli” bloc demanded that equality be added to the basic laws that comprise the Israeli constitution. But again, why did Gantz support the Druze cause, while remaining silent about the struggle of the Muslim Arabs against the Nation-State Law? The reason was the changing political discourse. It was not just that collective identity and the character of Israel had become the dominant ideological axis under Netanyahu’s governments, but it was also because the foundations of the public discussion had changed. The discourse of Israel as “Jewish and democratic” was based on a universal, national and liberal ethos. This included the universal right of national self-determination, and the preservation of human and civil rights in democracies. That was the underlying ethos of the Declaration of Independence that had always constituted the Israeli set of values.

However, as we saw earlier, 2013 brought into the political debate the alliance of the brothers – Lapid and Bennett, Yesh Atid and Jewish Home – that endorsed the republican ethos of rights and obligations. This ethos was first overtly used by Israel Beitenu in 2009 and later adopted into Likud Beitenu, when the Likud and Lieberman’s party merged in 2013. Lieberman’s slogan was “no citizenship without loyalty” and the translation was: rights in return for loyalty to the Jewish state. This rights and obligation discourse spoke to the majority of Israelis, who harbored resentment against the ultra-Orthodox camp that does not serve in the IDF or widely participate in the work force. This was also the reason why Gantz supported the cause of the Druze community (which serves in the IDF but was ignored in the Nation-State Law) and refrained from publicly supporting the Muslim demonstrations against the Nation-State Law. Thus, the republican ethos of rights-and-obligations, which first appeared in the extreme right with Lieberman, was adopted by the Likud and became the trademark of Jewish Home, Yesh Atid and Blue and White. At the same time, the discourse of civil rights, which had been intentionally delegitimized by Netanyahu in the 2015 elections and through the NGO Law, was now associated with the extreme left and deplored as non-patriotic. The struggle over values became the key to understanding the constitutional battle over the Nation-State Law: Who is “the people” in Israeli democracy’s rule of the people? Is it the Jewish people, as the right bloc contended, or all citizens of Israel, as the center-left insisted?

1. **Constitutional Change: The Nation-State Law and the Democratic Deficit**

The political-cum-ideological picture demonstrated the profound change in the Israeli party system as collective identity became the determining factor. An ideological realignment had occurred, with the religious and ultra-Orthodox parties departing from their traditional role as pivot parties and becoming hardcore right-wing ideological parties, based on an ethno-religious worldview enshrined in the Nation-State Law. Furthermore, the political discourse itself had changed, from a rights-based consensus to an emphasis on the obligations that come with rights. Rights that entail obligations became the dominant discourse, from the extreme right to the centrist Blue and White and Yesh Atid.

Could we say that just as Lieberman’s “no citizenship without loyalty” migrated from the deep right to the center, the Nation-State Law moved in the opposite direction? As noted, the law was first introduced by Dichter, of the centrist Kadima party. It was enthusiastically adopted by a third of the MKs, led by Kadima and Labor, but then moved so far to the right that the new basic law was enacted only with the votes of the Likud and Netanyahu’s natural partners, in the face of considerable public protest from the center and left. In order to understand the vision behind the Nation-State Law, and the dramatic constitutional change it brought into the polity, we need to examine the origins of the law and its constitutional journey in the Knesset – from the Kadima proposal, to the endorsement by the extreme right and the debates in the committee that formulated the basic law, a law that changed the balance between personal and collective rights in Israel. The dialogue took place in three arenas: 1) the Knesset; 2) the intellectuals and NGOs who supported or opposed the proposed legislation; and 3) the courts. Political and intellectual discourse thus comprised the setting for the constitutional change. The driving forces behind the scenes were no less central than the MKs at the forefront.

1. The Center’s Giving and Misgivings

Avi Dichter, former director of the Shin Bet and MK for Kadima, proposed in August 2011, with the backing of 39 other MKs, a new bill called “Basic Law: Israel – the Nation State of the Jewish People.”. Kadima was established by Ariel Sharon with MKs from Likud and Labor to break the partisan left-right deadlock and enable the disengagement from Gaza. It became, under the leadership of Ehud Olmert, the largest party in Israel in the 2006 elections. After Olmert’s resignation due to bribery charges, Kadima again won the largest number of seats in the Knesset in 2009 under Tzipi Livni – who was not, however, able to form a coalition. In view of the approaching leadership contest in Kadima, Dichter was looking for public coverage and proposed the Nation-State Law. The support for the private member’s bill, introduced in the Knesset on August 3, 2011, was extensive and included many MKs from Kadima, the Likud’s main rival, and even some Labor MKs. Together with the MKs from the Likud, Jewish Home and Israel Beitenu, about 100 MKs were in favor of Dichter’s bill at this stage. However, on November 14, 2011, Livni forced Dichter to withdraw his proposal after receiving a lot of criticism for trying to bring about constitutional change through a private member’s bill.[[63]](#footnote-64) Dichter, nevertheless, prepared a new draft. Upon declaring his decision to run against Livni in Kadima’s primaries, Dichter stated his intention of negotiating entrance into Netanyahu’s government.[[64]](#footnote-65) He later resigned from the leadership race in Kadima, joined the Likud party and was appointed chair of the Knesset Foreign Affairs and Defense Committee. His dowry for the Likud was the Nation-State Law.

The first clause in Dichter’s original proposal read “Israel is the national home of the Jewish people, where it fulfills its aspiration for self-determination according to its cultural and historical tradition. The exercise of national self-determination in the State of Israel is unique to the Jewish people. Any other legislation will be interpreted in accordance with this basic law.” The second clause stated: “Israel has a democratic rule.”[[65]](#footnote-66) On the face of it, the proposal does nothing beyond reiterating what already stated in the Declaration of Independence. However, the Knesset’s legal advisor said in reference to the proposal: “I think one cannot underestimate the importance of this proposal, due to the consequences and meaning it has for constitutional law in Israel.” The advisor went on to explain that the proposed legislation would change the balance between Israel’s two defining characteristics: Jewish and democratic. Instead of a “horizontal balance between the two parts of the formula,” the law would create “a hierarchical balance between them … the top of the constitutional priority would be the principle that Israel is the nation-state of the Jewish people, and only under it the principle of the democratic state.”[[66]](#footnote-67)

The Nation-State Law supposedly echoed the Declaration of Independence, but in fact introduced a profound constitutional change in the balance between the Jewish and democratic components of Israel’s collective identity. The values and vocation of the State of Israel also change: They now emanate from it being a Jewish state, while democracy is but a procedural way of making decisions. Jewish values, democratic procedures. At the time, Prof. Yedidia Stern, a constitutional law expert at Bar-Ilan University, argued: “The essence of the proposal is radical: changing the constitutional definition of the state. Instead of a ‘Jewish and democratic state,’ we have ‘a Jewish state whose regime is democratic.’ This is not a language game, but an earthquake. Today the two elements are of equal standing … If the proposal is be approved, a hierarchy will be created where the Jewishness of the state is positioned above its democraticness. Whereas the existing definition seeks complementariness between the two elements, the new bill proposal seeks to determine and place one above the other.”[[67]](#footnote-68)

1. Gavison and Constitutional Anchoring: Vision Law – yes, Nation-State Law – no

After Livni, now the leader of the Hatnua party, was nominated minister of justice in Netanyahu’s government in 2013, she appointed Prof. Ruth Gavizon to draft a basic law on Israel’s Jewish and democratic character. Unlike Dichter’s private member’s bill, the idea was to promote new legislation as a governmental proposal.[[68]](#footnote-69) The initiative enjoyed the full support of the coalition, which including 70 MKs from Likud-Beitenu, Jewish Home, Yesh Atid and Hatnua. What was such legislation initiated by the member of a centrist party in 2011, later abandoned and then resurrected in 2013? Why was Gavison appointed by Livni and why did she eventually recommend against enacting the Nation-State Law?

Livni explained that Gavison’s mandate was “to formulate a proposal of a constitutional provision dealing with the character of the State of Israel as a Jewish and democratic state, in a manner that balances and integrates these values, both the Jewish and democratic.”[[69]](#footnote-70) Livni had long been interested in establishing an Israeli constitution that enshrines the Declaration of Independence, with its balance between Jewish and democratic. In light of the right-wing’s agenda and action on this issue, Livni wanted to ensure that this balance would be preserved. No one could complain that it was improper to amend a basic law from the opposition since Livni was operating from within the coalition.

 Gavison, on her own part, sought to contribute her professional interest in the character of Israel as Jewish and democratic. She was a founding member of the Association of Civil Rights in Israel (ACRI). (Established in 1972, ACRI is the oldest civil rights association in Israel.) She was also the initiator and co-author of the Gavison-Medan Covenant, which proposed a new framework for co-existence between secular and religious Jews, and was known for strong views on Israel as a national democracy of the Jewish people. Gavison was also a fierce opponent of judicial activism. In fact, when Livni later nominated her for the Supreme Court, the president of the court, Aharon Barak, rejected the nomination, claiming that Gavison “had an agenda.”[[70]](#footnote-71) So, while Livni sought a balancing act between Jewish and democratic, Gavison explicitly stated that she thought Livni had chosen her, in part, because of her views on judicial activism. The proper role of the Supreme Court role in Israel was a matter of growing dispute. Prominent opponents of judicial activism included Daniel Friedmann, a former minister of justice, and coalition members Shaked (Jewish Home) and Levin (Likud).[[71]](#footnote-72)

The Livni-Gavison initiative therefore offered the promise of shaping the constitutional future of Israel by restoring the balance between the Jewish and democratic components, and anchoring it in the basic laws. The hope was to mobilize broad, non-partisan support for this effort. However, Gavison’s primary recommendation – after months of interviewing political leaders, intellectuals and the professional community – was “to refrain, at this stage, from additional constitutional anchoring of the core vision through legislation, in part or as a whole.” (p. 6) She offers three types of arguments: the general function of constitutional/basic laws; the likely effects of enacting the basic law; and the basic law’s impact on “the constitutional revolution” of human rights and the courts’ role.

Constitutions, Gavison argues, seek to provide a shared framework of the society’s principles, leaving conflicts regarding the specific arrangements aside. Such solidarity was indeed embedded in the Declaration of Independence, using thinly defined concepts that allowed different communities to interpret them according to their understanding, while still generating agreement on the three fundamental elements of the State of Israel: its Jewish character, its democratic character and human rights. Gavison contends that constitutionally anchoring these principles at that time would cause disagreement, conflicts and strife rather than solidarity and agreement. In terms of constitutional anchoring, she explained: “When states chose to anchor their vision, they did so by means of a declaratory preamble to a full constitution, as a part of explicit and deliberate constitutional politics, when the legislation enjoyed broad and cross-partisan support, and after all relevant sectors of the relevant society were invited to participate in the process of deliberation and drafting. Moreover, these vision statements always include strong particular commitments alongside civic, democratic and universal commitments. This is not the case in Israel today, and this is not true of many of the proposals pending in the Knesset.” (p. 23)

There are three arguments here: first, that the constitutional anchoring should be of the entire vision, including its three parts – Jewishness, democraticness and human rights; second, that it should be constituted as a preamble or as a Basic Law: Vision, and definitely not as a Basic Law: Jewish Nation-State; third, that it is inconceivable to include national commitments in a democratic constitutional law without including civic, democratic and universal commitments to the human rights and civil rights of the sovereign body – the citizens of the state. In her judgment, the coalition partners’ proposals for the Jewish Nation-State basic law were being used as an adversarial tool, seeking not compromise and inclusion but the opposite. The proposals focused only on anchoring Israel’s Jewish character, and their advocates had not sought broad discussion and support. Instead, the current coalition was trying to use its power to dictate their take on the character of Israel.

The unique aspect of the constitutional situation in Israel, which she analyzes in detail, is the “constitutional revolution”’ that followed the enactment of the Basic Law: Human Dignity and Liberty in 1992. Like any Bill of Rights in a democratic constitution, the basic laws in Israel have superiority over other laws. Therefore, the Supreme Court can rule unconstitutional any legislation it views as inconsistent with basic laws pertaining to human rights. In light of Gavison’s opposition to such judicial review, some may have thought that right-wing politicians would be more inclined to accept her recommendations. She explicates:

A central justification for the need to enact a Jewish nation-state basic law stresses the urgent need to ‘undo’ the imbalance in the vision created by the ‘constitutional revolution.’ The argument is that since the 1992 laws the old balance among components of the vision has been changed, and democracy and human rights have received greater weight. The supporters of legislation want the law to influence decision-makers, especially jurists and judges, to return to the tendency of giving equal weight to the component of the Jewish state. The advocates of the Jewish Nation-State Law are right in stating that there have been significant changes in the discourse about the vision of the state, based in part on the impact of the inclusion of the expression ‘Jewish and democratic’ in the 1992 laws ... However, the truly serious impact of the 1992 laws is not at the level of public discourse and the endorsement of the vision, but in the power given the courts to review and invalidate Knesset legislation, and in the expansion of the human rights discourse and the grounds for judicial review. These broadened powers permitted and facilitated the transfer of decisions that up to 1992 were within the almost exclusive power of the political system, to the judicial system.

Claims against this tendency should be seriously heard and debated. However, the proposed Jewish nation-state basic laws do not deal with this issue in any way. They do not seek to change the legal situation concerning the powers of the courts ... It may in fact have the opposite effect: It is a well-established principle that courts have the power to interpret laws of (p. 21) the Knesset and be their authoritative interpreters. Once the vision of the state becomes a full-fledged law, the power of the courts to interpret this law according to their inclinations and perceptions will in fact increase. (p. 20-1)

Gavison, identifying with right-wing politicians who rail against the “constitutional revolution,” argues that the Supreme Court would become the authoritative interpreter of the laws once “vision” questions become legal questions. If you want to limit the role of the Supreme Court, she advises, do not legislate any more basic laws that are under the sole jurisdiction of court.

Here we get to the heart of the constitutional debate, and see why Gavison was wrong in understanding the overall scheme of Netanyahu’s government: The Nation-State Law was but one piece of the constitutional puzzle. There are three major parts to the agenda: giving the Nation-State Law an equal – or superior – standing vis-à-vis the basic laws on human rights enacted in 1992; changing the composition of the Supreme Court; and enacting a limitation clause to reduce the Supreme Court’s power to invalidate Knesset legislation as unconstitutional. We discuss this greater plan in the next chapter. Before turning to the rationale of Netanyahu’s ministers in proposing and enacting the Nation-State Law exactly in the format that Gavison advised against – imbalanced national legislation with a limitation clause that makes it superior to all other laws – we will examine the comparative aspect of the Nation-State Law.

1. Does the Nation-State Law Undermine Israel as a Democracy?

Gavison’s report advises against constitutionally anchoring the character of Israel. Constitutional anchoring should enjoy wide public consensus, and such consensus does exist concerning the Jewish and democratic character of the state, she argues. Gavison notes, however, that there is no broad public confidence in those leading the campaign for constitutional change. Such anchoring, she says, would just give more power to the Supreme Court. If constitutionalizing at all, she recommends enacting a Basic Law: Vision, which would include the Jewish, democratic and human rights elements thinly defined, leaving them open to different interpretations in society. When Gavison submitted her report, Livni asked her: What if the proponents of the Nation-State Law continue to push for this legislation? Gavison suggested that a basic law affirming the Declaration of Independence may be the best options. In any case, she emphasized, the Nation-State Law should at least include a statement about the equality of civic rights.[[72]](#footnote-73)

From a constitutional perspective, Gavison’s argument could be transformed into a bigger question: Since other democratic countries endorse the national elements in the preamble (vision) part of their constitution, what are the consequences of according the Nation-State Law the status of basic law? Or in harsher terms: Can a state in which collective rights have the same or superior standing to human rights still be considered a democracy? In comparative assessment, the Nation-State Law is exceptional because other national democracies assure equal rights for all its citizens and not only proclaim the interests of the national majority. Gavison herself argues that the Israeli demos is composed of all its citizens and the Arab minority, in particular, should have a place in the vision of the state.

In a comprehensive study, Alexander Yakobson and Amnon Rubinstein, the minister behind the Basic Law: Human Dignity and Liberty (1992), show that in all national democracies, and not only in civic democracies like the U.S. and France, national history is mentioned in the preamble of the constitution, but always includes an affirmation of the political equality of all citizens.[[73]](#footnote-75) Israeli basic laws, without the equality clause, make Israel into an extreme version of a democracy. Yakobson contends that even Pakistan has a more enlightened constitution than Israel after the passage of the Nation-State Law.[[74]](#footnote-76) The Basic Law: Human Dignity and Liberty defends human rights but not civic rights, he notes. That is, the political rights of the citizens of Israel, the sovereign in a democracy, are not protected in the basic laws, and these rights are completely missing from the Nation-State Law in all of its approved versions.[[75]](#footnote-77) At the very least, he suggests, Israel should adopt the proposal of Benny Begin (Likud), who advocated a basic law stating: “Israel is the nation-state of the Jewish people, with equal rights for all its citizens.” Yuval Shany, former Dean of the Law Faculty at Hebrew University, argues that it is not only civic rights, but collective minority rights that need to be legislated.[[76]](#footnote-78) The issue is the following: democracy is a form of government where the sovereign is the people. The people is the demos – all of the citizens of the state. However, the Nation-State Law defines the people as the Jewish people, and makes no reference to the citizens of the state. Thus, we return to the question: If the essence of democracy is to protect the rights of the individual citizens of the state, is a state that places collective rights at a superior or even equal standing to individual rights still a democracy?

After receiving the report from Gavison, Livni tried to pass a Declaration Law, but could not win a majority. She explained why she thought the right-wing insisted on passing the Jewish Nation-State basic law:

But the Nation-State Law really determines that Israel is the state of the Jewish people, which is nice and important, but it completely erases the other part of the Declaration of Independence – the equality for all. Okay, I know, you might think that it is a mistake and now only propose the Nation-State Law and later we will add equality. Absolutely not. We have tried, we put proposals that stipulate both, the state of the Jewish people and equality for all, even a proposal that takes the Declaration of Independence and attempts to legislate it into a basic law. This government refuses, objects, wants to annihilate equality from our shared life. You see, there is a constitutive move here. The Nation-State Law is really a preparatory law for annexation. Because the ideology of the Jewish Home is to annex Judea and Samaria and all the territories. They know Israel will not be able to be both Jewish and democratic if we annex those millions of Palestinians. In fact, Israel would be neither this nor that. But there are those who think that we would not notice it when Israel turns into something - and I have for years refrained from using this word – that Israel is becoming an apartheid state. Or halachic state. Or both.[[77]](#footnote-79)

While Gavison gives the Netanyahu government the benefit of the doubt, Livni argues that equality was deliberately omitted from the Nation-State Law, and that the real purpose of the law was to pave the way for annexing the occupied territories without giving civil rights to the Palestinians. Livni, a revisionist and long-term Likudnik, moved to Kadima and developed an ideological position that from her perspective is the only viable way to remain true to her national and liberal values. The only way is a two-state solution that maintains a Jewish majority, and Israel as both Jewish and democratic, national and liberal. It is the Likud under Netanyahu, she argues, that took the right’s national vision at the expense of its liberal values. The 2013-2015 coalition collapsed because of the attempt to pass the Nation-State Law, despite the objections from Yesh Atid and Livni’s Hatnua. Now we examine what was happening in the right-wing camp.

1. Jewish and/or Democratic? The Struggle within the Coalition

Who was behind the original proposal put forward by Dichter in 2011? Those who pulled the strings, proposed and then refined and pushed the constitutional anchoring of the Nation-State Law acted behind the scenes. According to Israel Harel, former chair of the Institute of Zionist Strategy and founder of the Yesha Council of Jewish settlements:

In late 2009, the team at the Institute for Zionist Strategy finished drafting the Nation-State Law. At the beginning of 2010, I met Livni, then head of the opposition party Kadima, to propose that she sponsor the bill. The assumption was that the Likud, then in power, was sure to support it, as would the rest of the coalition. If the principal opposition joined, the bill would pass with a huge majority. The draft I proposed to Livni was much more nationalistic than its current form.[[78]](#footnote-80)

Harel discloses that Livni conditioned her support for the law on returning the West Bank to the Palestinians. But, argues Harel, Netanyahu missed the historical opportunity to pass the law with a huge majority, probably due to his desire to use it for the election. So, the initiator and formulator of the Nation-State Law was none other then the settlers’ leader Harel himself and the Institute for Zionist Strategy, which he had founded. The role of the institute in general was to portray the settlements in the occupied territories as the direct continuation of the Zionist national movement. Livni, resisting Harel’s suggestion to lead the Nation-State Law, was clear about the fact that annexing the territories to Israel would create either a non-Jewish democracy or a non-democratic Jewish state. In its proposal, the institute promoted a view that the Holy Land, from the Mediterranean Sea to the Jordan Valley, should be part of Greater Israel; therefore, it was key to leave out any mention of equality as a principle. This emphasis was clearly the intention of Levin, the MK who was most active in mobilizing the majority for the proposal in the Knesset. At a Kohelet Forum conference on the Nation-State Law, Levin called the law a milestone that overturns the post-Zionist process. He emphasized that one of its clear operative results would be to strengthen Jewish settlements in the different parts of the Land of Israel.[[79]](#footnote-81)

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